

Item No. 7
26.07.2023
Court. No. 19
GB

C.O. 2209 of 2023

Dulal Nanda Dhar & Ors.
Vs.
Sri Manoj Das & Ors.

Mr. Jayanta Das,
Ms. Soumita Ghosh

...for the Petitioners.

The petitioners are aggrieved by the order dated April 11, 2023 passed by the learned Civil Judge (Junior Division) at Kalyani, Nadia. By the said order, Deed No.867 of 2007 and Deed No.868 of 2007 had been marked as exhibits 'A' and 'B' respectively.

According to the petitioners, the said documents could not be marked exhibits at the stage of argument and secondly, the documents were not original documents and could not have been tendered in evidence.

The learned court below has found that the documents which were produced by the defendants were photocopies and marked as true copies by the concerned authorities. Moreover, full-fledged cross-examination on the basis of the said documents had been allowed at the time of evidence. The original could not be produced by the parties and at the behest of the party, who could not produce the original, the District Registrar, Nadia had been summoned by the court to produce such documents. The District Registrar, Nadia informed the court that the records were misplaced and were not available in

their office. Thus, the court had marked the documents as exhibits.

The learned counsel for the petitioner relies on the provisions of Order 13(1) of the Code of Civil Procedure and submits that the original documents ought to have been produced before issues were framed. Reliance has been placed by the petitioners in the matter of ***J. Yashoda versus K. Shobha Rani*** reported in **(2007) 5 Supreme Court Cases 730**.

Having gone through Section 63 of the Indian Evidence Act, 1872, this Court is of the view that a copy prepared by a mechanical process (in this case xerox copy) and compared with the original was admissible in evidence. The learned court found that the authorities had indicated that those copies were true copies and hence, the documents which were already filed by the defendants and marked 'X' and 'X1' for identification, were marked as exhibits after allowing the plaintiffs adequate opportunity to cross-examine the defendants on the said documents. Moreover, the learned court has not made up its mind as to the admissibility of those documents. The learned court below has categorically held that the admissibility of those documents will be decided at the trial.

The decision in *J. Yashoda* (supra) would not be helpful in this case as admittedly, the original was not in the possession of either the defendants or at the registry office. The registering authorities themselves had endorsed on the photocopy that the same was a true copy of the original.

Under such circumstances, the Court does not find any reason to interfere with the order impugned. The admissibility of the said documents as evidence, is kept open to be decided by the learned court at the trial. The petitioner can raise the point of admissibility of such documents at the trial.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)